



FIRING PEOPLE IS HARD TO DO

When a lecturer removed topics from her lessons because she viewed them as ‘optional’, and then refused to attend mediation proposed by her employer, she was dismissed. But as Paul Robertson explains, a procedural mistake by the university meant her dismissal was unjustified.

A PROCEDURAL MISTAKE BY A university has led to the dismissal of a lecturer being held to be unjustified by the Employment Relations Authority.

The decision emphasises the difficulties caused by delegating a disciplinary process to an employee.

THE BACKGROUND

In 2012, Dr Turner was employed at Otago University to teach fourth year students. She felt undervalued and matters came to a head when the classroom she regularly used for teaching was reallocated.

In response, she removed from the lessons topics that she had previously taught. She took the view that the topics were optional and that she had voluntarily included them in previous classes.

The university saw it differently and directed that she reinstate the teaching she had done in previous years. Dr Turner was intransigent. Meetings with her head of department became bitter. She refused to teach the topics she viewed as “optional”.

The university proposed mediation, but Dr Turner refused to attend because of her concern that not all information relevant to her employment had been disclosed. Ultimately she was dismissed.

VOLUNTARY TEACHING

Dr Turner’s first complaint was that she was disadvantaged by the university adding what had been previously “voluntary teaching” to her workload. This was rejected by the Authority.

Dr Turner had been appraised on the teaching. It was expected by the university that she would offer that teaching to all students.

Her second complaint was that the university had breached its duty of good faith by failing to provide relevant information.

The Authority found that Dr Turner’s repeated requests for information, including information “... in the mind of the people involved”, were excessive. It was also an artificial barrier to meeting and mediation.

It was unclear what

information she was requesting—the duty of good faith is a two-way street, and “...direct and clear communication is necessary”.

Her refusal to mediate until the information was provided was unwarranted.

After considering all the grievances raised, the Authority found that the direction to teach the full course was appropriate. Dr Turner’s refusal to do so was unwarranted and amounted to serious misconduct. However, the dismissal was found to be procedurally inappropriate.

THE PROCEDURAL PROBLEM

The vice chancellor of the university did not become involved. He delegated responsibility to an HR manager who relied upon letters sent between the parties’ solicitors.

Dr Turner was entitled to meet the decision maker and to have her explanation considered. This did not happen. She had no reasonable opportunity to explain her actions to the decision maker. In addition, the vice chancellor

retained a right of veto over the decision.

The Authority found that Dr Turner should have been told that the decision maker was acting under delegated authority, that the decision maker should have put into writing the information he intended to put to the vice chancellor, and that he should have copied the information to Dr Turner so she could comment before the final decision by the vice chancellor was made.

For these and other procedural reasons Dr Turner’s dismissal was held to be unjustified.

The Authority accepted that Dr Turner contributed towards her situation because of her intransigence. Her compensation was reduced by 50 percent.

Turner v Vice-Chancellor of the University of Otago [2015] NZERA Christchurch 77

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